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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re J.B., a Person Coming Under the
Juvenile Court Law.

C.B.,

Petitioner,

v.

THE SUPERIOR COURT OF LOS
ANGELES COUNTY,

Respondent;

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Real Parties in Interest.

No. B210290

(Super. Ct. No. CK56032)

ORIGINAL PROCEEDING. Petition for extraordinary writ, Marilyn Mordetzky, Juvenile Court Referee. The petition is denied.

Law Office of Barry Allen Herzog, Ellen L. Bacon and Sue Dell for Petitioner.

Raymond G. Fortner, Jr., County Counsel, James M. Owens and O. Raquel Ramirez, Deputy County Counsel, for Real Party in Interest.

No appearance on behalf of minor.

No appearance on behalf of Respondent.

C.B. (father), father of J.B., now aged 8 years, petitions for extraordinary relief pursuant to California Rules of Court, rule 8.452. He seeks review of an order terminating his reunification services and setting a permanent plan hearing under Welfare and Institutions Code section 366.26.¹ Father asserts the trial court erred in failing to grant him reunification services beyond the statutory maximum, in finding he had not made substantial progress in his case plan, and in finding that the Department of Children and Family Services (DCFS) provided reasonable reunification services. After reviewing the extensive record, we deny the petition.

FACTS AND PROCEDURAL HISTORY

Prior Dependency Proceedings

J.B. first came to the attention of DCFS in 2001, when he was one year old. DCFS received information that J.B.'s mother (mother) was neglecting and physically abusing him.² However, that information proved inconclusive.

DCFS received a second referral regarding J.B. in 2004, when J.B. was three years old, alleging mother emotionally and physically abused J.B.³ The referral was substantiated, and on June 15, 2004, the juvenile court sustained a section 300 petition alleging mother had abused J.B. and father failed to protect him. Mother was also

¹ All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

² J.B.'s mother is not a party to this petition.

³ A later medical report noted that when J.B. was two and one-half years, mother struck J.B. on the back four times with a video cable. It is not clear if that was a separate incident of abuse.

convicted in a criminal proceeding of misdemeanor willful cruelty to a child. At that time, mother's criminal record included arrests for a 1993 charge of battery, a 2003 charge of infliction of corporal injury to a spouse or cohabitant,⁴ and a 2004 charge of felony willful cruelty to a child.

As a result of the 2004 dependency proceeding, the family received reunification services and family maintenance services. J.B. resided with his paternal uncle during most of that time.⁵ J.B. was reunited with his parents in September 2005. Beginning in March 2006, the family also received six months of family preservation services. The juvenile court finally terminated jurisdiction in that matter on September 28, 2006.

Current Dependency Proceeding

One week after the juvenile court terminated jurisdiction, when J.B. was six years old, DCFS received another referral regarding the family. On October 5, 2006, J.B. told a school counselor that mother hit him with a hanger. DCFS was called, and a social worker interviewed J.B. The social worker observed J.B. to be injured just below the right eye. J.B. said mother had struck him because she did not believe he was doing his homework. J.B. was "terrified" of mother. Father was not home at the time of the incident.

The social worker took J.B. to DCFS offices, and called an emergency meeting with the family. Mother denied abusing J.B., instead asserting that the two were playing when the hanger accidentally struck him. Because the family was cooperative, DCFS agreed to keep the family intact and open a voluntary family maintenance case to provide services. The family promised to participate in the voluntary plan, cooperate with DCFS,

⁴ Father had a similar charge the same date. Apparently there was a bout of domestic violence between the two, and both were arrested.

⁵ The paternal uncle's domestic partner was also extensively involved in caring for J.B. However, for ease of reference, we will refer to both as "uncle." Additionally, we note that the record is unclear as to whether uncle was, in fact, J.B.'s great-uncle.

and refrain from corporal punishment. J.B. was released to father, provided father protected J.B. from mother.

The next morning, J.B. was given a physical examination. The nurse practitioner who performed it reported that J.B. had, indeed, been subject to physical abuse and possibly emotional abuse. DCFS thereupon re-interviewed J.B., who indicated mother had actually thrown the hanger at him.⁶ With that, DCFS decided to detain J.B. from mother. Mother agreed to leave the family home. Father completed an affidavit indicating he would protect J.B. from mother and would not allow her to stay in the family home. He also stated that he would find childcare for when he worked.

The juvenile court approved the detention, and another dependency matter was initiated on October 12, 2006. DCFS filed a section 300 petition alleging mother physically abused J.B. and father failed to protect him. Both mother and father denied the allegations. On October 19, 2006, DCFS was ordered to begin providing family reunification services. Mother was allowed monitored visits with J.B. DCFS later referred J.B. for therapy.

Two months later, DCFS filed an amended petition to add reference to mother's prior conviction for child cruelty toward J.B. and the failure of previous attempts to reunify the family. It requested that reunification services be denied to mother on account of that prior abuse. It also moved that J.B. be placed with uncle. DCFS had investigated and confirmed information that father allowed mother back into the family home and to have access to J.B., in violation of his prior agreement and the court's order. In fact, according to a neighbor, mother had been left alone with J.B. during the days while father worked. J.B.'s daycare center confirmed he had stopped attending. The juvenile court granted DCFS's motion and J.B. was placed with uncle.

⁶ Two days later, J.B. told sheriff's deputies the same thing, and mother was eventually charged with misdemeanor child abuse.

Jurisdictional Hearing

A contested jurisdictional hearing on the amended petition was scheduled for January 8, 2007. In anticipation of that hearing, DCFS interviewed the family. Mother believed the case was a punishment for J.B.'s being bi-polar. She believed that J.B. was claiming further abuse in order to get her out of the house. In her view, J.B. was the abuser, and she and father were the victims. Father agreed that, although he was not home when the incident with the hanger occurred, J.B. was a difficult, aggressive child and was to blame, not mother. Earlier, father had left a message on the social worker's voicemail chastising DCFS for causing J.B.'s behavior, claiming that J.B. was fine around mother until DCFS became involved, giving J.B. power that "got to his head," and asserting that J.B. would get better provided DCFS stopped its interference.

J.B.'s maternal grandmother, on the other hand, having visited the family over Thanksgiving 2006, indicated that J.B. was aggressive and violent during her visit, which she considered a cry for help. Meanwhile, J.B. reported that he enjoyed living with uncle and wanted to stay. J.B. noted that mother did not visit him, and believed that father did not wish to see him anymore because father blamed him for the situation. In a letter, J.B.'s therapist wrote that J.B. and father had attended four therapy sessions. J.B. presented as irritable, distractible and anxious. When father began discussing J.B.'s behaviors at home, J.B. became extremely agitated and physically aggressive, requiring restraint until he could "de-escalate." The therapist diagnosed J.B. with a mood disorder, bipolar disorder and possible post traumatic stress disorder. She continued to work with J.B. toward improving communication skills and reducing aggressive and impulsive behaviors, and also referred J.B. to a psychiatrist. According to father, since beginning therapy, J.B. was reducing his aggressive behaviors.

At the jurisdictional hearing, father requested a 10-day continuance. However, because the parties had come to court as scheduled, DCFS had an opportunity to observe J.B.'s behavior. According to uncle, when J.B. arrived at the courthouse, mother and father spoke to J.B., telling him that the situation was all his fault and asking if he was "happy now." Therefore, J.B. was placed in a segregated area of the courthouse to shield

him from mother and father. Care workers in the segregated area reported that J.B. was cooperative all day. When the social worker entered the area to interview J.B., he initially hid behind a chair, but when she stated she had just seen uncle, J.B. emerged and readily told her he had been fine in the segregated area. J.B. confirmed his earlier statements that he was afraid of mother because she hit him, as well as his description of the latest incident with the hanger. J.B. also confirmed that mother and father made derogatory remarks to him earlier in the day. Additionally, DCFS learned that during mother's only visit to J.B. at uncle's home, scheduled to be three hours long, mother had not interacted with J.B. and left early when J.B. asked if the three hours were over yet. Father also visited J.B. once, and stayed for two hours, though his interaction with J.B. was minimal. DCFS further noted that father told J.B. he did not want to see J.B., and that mother and father made profane comments about the social worker in J.B.'s presence.

At the continued hearing, the juvenile court found that J.B. fell within its jurisdiction based on the allegations of mother's physical abuse and father's failure to protect J.B. It placed J.B. with uncle. J.B. was to continue with therapy. Because mother had previously abused J.B., she was denied reunification services pursuant to section 361.5, subdivision (b)(3). She was allowed monitored visits with J.B., but only in a therapeutic setting and after J.B. had completed a minimum of five therapy sessions. Father was allowed reunification services, and was ordered to enroll in and complete individual counseling to address case issues, and parenting classes. Father was to receive monitored visits with J.B., to be liberalized at DCFS's discretion.

Six Month Review Hearing

Six months later, on June 11, 2007, a review hearing took place. J.B. was thriving in uncle's home, and told the social worker he wanted to stay there. His academic performance was improving, and he appeared to be learning the school rules and the consequences of breaking them during the school day. However, he still had behavioral problems, particularly after school, and on one occasion struck an after-school counselor

because he was mad at her. J.B. apologized for his behavior. J.B. remained afraid of mother and became agitated when asked about her, but enjoyed visits with father. DCFS had liberalized father's visits to unmonitored day visits in a public setting.

Father had complied with his case plan, completing parenting classes and attending counseling. However, he told his therapist that J.B.'s difficult and manipulative behavior was the real problem with the family. He also told the social worker that he felt he was being punished for J.B.'s actions, and just wanted DCFS out of his life. Mother was still not attending counseling with J.B., as J.B.'s therapist reported that it would not further J.B.'s therapeutic goals. DCFS also received reports of domestic violence between father and mother, who continued to live together. In light of that information, DCFS remained concerned that father could not provide for J.B.'s safety, and recommended that J.B. continue residing with uncle. The juvenile court agreed, but ordered that visits between mother and J.B. proceed.

Thereafter, on June 14, 2007, the court in mother's criminal case issued a restraining order directing mother not to contact J.B. except as permitted by DCFS. It further directed that any visits between mother and J.B. be monitored. In early July 2007, DCFS spoke to J.B. about visiting with mother, but was met with a negative reaction. J.B. reiterated that he did not wish to visit because "she hits me," and explained that he got angry and kicked the door after visits with father when father suggested J.B. would return home. J.B. said he was "used to everyone yelling" when they were angry, but promised he would try not to.

On July 16, 2007, J.B. was hospitalized for seven days on an involuntary psychiatric hold when it was reported that he was hitting and choking a neighbor child. J.B. had further been torturing small animals, and was considered a danger to himself or others. According to uncle, J.B.'s behavior had been deteriorating over the previous month, after a visit with father and the maternal grandmother. Upon discharge from the hospital, J.B. was returned to uncle's home, continued with his therapist, and was referred for further therapeutic behavioral and psychiatric services. Mother became angry when she learned J.B. would be returned to uncle and walked out of a meeting with the social

worker about the matter, though she later explained this was a coping mechanism she had learned in anger management classes. Mother stated that she was glad J.B. had been hospitalized, as it proved her earlier statements about him were justified. She also commented that uncle would require further services “with that kid.”

After J.B. was released from the hospital, father and mother proposed that J.B. participate in conjoint counseling with them through their therapist.⁷ J.B.’s therapist, however, recommended against conjoint counseling until it would be beneficial to J.B., noting that proposed changes to his visitation may have precipitated his hospitalization. Nevertheless, at an August 9, 2007 progress hearing, the juvenile court directed that conjoint counseling go forward. Two days before the first-scheduled session, J.B. was again hospitalized after he began hitting and biting five adults during an individual therapy session. DCFS filed a section 388 petition to modify the juvenile court’s earlier visitation and conjoint counseling orders. J.B. told his therapist and the social worker that his behavioral problems were happening because he did not want to visit with mother. Doctors who treated J.B. at the hospital indicated J.B.’s behavior related to visits with father and the maternal grandmother, as well as anticipated visits with mother. J.B.’s therapist diagnosed him with disruptive behavior disorder and post traumatic stress disorder related to anticipated visitation with mother, and recommended visits be suspended until J.B. could cope. Father, on the other hand, blamed DCFS for repeatedly having J.B. admitted to the hospital, and asserted that if J.B. were just returned home, everything would be fine. Father’s therapist reported that a 15-minute visit between father, mother and J.B. at her office, held after J.B. was released from the hospital, went well. In the end, the juvenile court agreed to suspend mother’s visits and appointed a CASA representative to make an independent investigation of J.B.’s best interests.

Over the next two months, J.B.’s behavior continued to deteriorate. He routinely misbehaved at school, including assaulting teachers and other children, banging on desks,

⁷ Mother and father saw the same therapist, and often attended sessions together. She will be referred to hereafter as father’s therapist.

disrupting presentations and refusing to follow directions. He was repeatedly suspended from school. Uncle requested that J.B. be removed from his home because J.B. could not effectively be disciplined, though uncle was willing to resume custody after J.B. received professional help. Ultimately, J.B. was placed in a treatment facility for troubled children, Five Acres, where he would receive intensive therapy. J.B. continued to visit with father during this time. J.B. reported to a school counselor that his father told J.B. he would be going home to live with father and mother, which J.B. maintained he did not want to do. When the social worker asked J.B. what father speaks to him about, J.B. tried to throw a chair, then crawled under a table and began to scream. J.B. told his therapist he fights at school when he gets angry at what mother did to him. Father was continuing to attend therapy as required, though mother had begun joining all his sessions.

Twelve Month Review Hearing

A 12 month review was scheduled for December 12, 2007. Father called the social worker just before that hearing to indicate he would do whatever was necessary to regain custody of J.B., including having mother move out of the home. However, the hearing was repeatedly continued, for a total of three months' time, for a contest by father. In continuing the hearing, the juvenile court ordered father, mother and uncle not to speak to J.B. about one another or the case. It also directed DCFS to investigate whether J.B. was ready for unmonitored visits, and whether the maternal grandmother could visit with J.B. The CASA representative was given permission to observe some visits, and mother was permitted a visit with J.B. monitored by court staff.

By the time of the continued hearing, DCFS determined that mother had tried to attend a meeting at J.B.'s treatment facility in violation of her restraining order, and that father was upset and frustrated when she was asked to leave. Additionally, father's visits had been reduced from four times a week to two, as it was disruptive for J.B. The maternal grandmother was accompanying father to the visits, and was intrusive in the case. Counselors at Five Acres even suspected that father was having difficulty managing his relationship with mother, as it appeared he was in a domestic violence

situation and his decisions were heavily influenced by mother and the maternal grandmother.⁸ In fact, J.B.'s therapist was concerned for father's emotional condition.

J.B. reiterated that he did not wish to visit with mother. He complained that father was pressuring him to say he wanted to visit mother, and the maternal grandmother wanted J.B. to give mother a chance. J.B. was beginning to dread visits with father as a result. J.B.'s behavior continued to be difficult, including tantrums, assaultive behavior, and even placing his own excrement under the beds of other children at Five Acres. Father and mother denied any domestic violence. Father's therapist reported the two were regularly attending conjoint counseling. Father further denied pressuring J.B. about visits with mother.

The CASA representative completed her report. She recommended that J.B. remain at Five Acres for treatment and continue in counseling to address anger management and "family origin" issues. She noted that J.B. understood he would receive help with his behavioral issues at Five Acres, and wanted to "make it" at his regular school. While J.B. was bonded with father, the CASA representative did not believe father would successfully reunify with J.B. in another six months, and so recommended termination of reunification services. Moreover, the CASA representative opined it would be best for J.B. to have some certainty that once discharged from Five Acres, he would return to uncle's home, as opposed to continuing with the possibility he might move back with father.

The CASA representative reported on her interviews with various parties in the matter. Mother indicated to the CASA representative that she wanted J.B. back, and would live in her car if not allowed to reside with father and J.B. Mother viewed herself as a stabilizing force in J.B.'s life, and felt she had developed the parenting skills necessary to care for J.B. In an interview on January 15, 2008, father told the CASA

⁸ When mother was asked to leave Five Acres, she grabbed father by the collar and told him if she could not attend the meeting about J.B., he could not either. Mother also charged at a Five Acres counselor, whereupon personnel had to threaten to call police.

representative that he saw no reason J.B. would not be better off living with father and mother, reasoning that if left alone, J.B. and mother would eventually “get it out of their systems.” In subsequent interviews, father explained that mother’s abuse of J.B. had been discipline or horseplay, that when at home J.B. was not fighting and did not need medication, and that father would protect J.B. as necessary. J.B.’s therapist at Five Acres stated her belief that Five Acres was the best place for J.B. for a time. She also disclosed that after he was asked to reduce his number of visits, father told J.B. that Five Acres was not allowing him to visit. The therapist was concerned that father was discussing the case with J.B. The therapist also observed J.B.’s behavior to deteriorate after the visit with mother after court. The CASA representative, who was present at the meeting in which mother was asked to leave Five Acres, also confirmed that father behaved negatively when he was not allowed to have mother with him at the meeting.

On March 6, 2008, the court again continued the contested 12 month hearing to April 21, 2008. The court also reiterated its order, over DCFS’s objections, that J.B. participate in conjoint counseling with mother. In addition, in light of a promise by mother to move out of the family home, DCFS was directed to evaluate the home for placement of J.B.

However, because J.B.’s therapists felt it would be detrimental, conjoint counseling was not begun.⁹ The therapist at Five Acres reported that father and the maternal grandmother had continued to visit, and were still pressuring J.B. to give mother another chance. Father had promised J.B. video games upon J.B.’s return home. The therapist felt father and the maternal grandmother were undermining any progress J.B. might be making at Five Acres, as J.B. threatened staff that his grandmother would have them fired. J.B. also had more tantrums just before or during the maternal grandmother’s

⁹ DCFS moved to have the visitation order vacated, but the motion does not appear to have been ruled upon. The juvenile court simply stated that it would not make any changes before the contested hearing.

visits, and had been repeatedly suspended from school on account of his behavior. In fact, the therapist asked that the court suspend the maternal grandmother's visits.

As for mother, she reportedly was living either with a friend or in her car. DCFS attempted to verify mother's whereabouts, but could not. Father's apartment manager told the social worker, however, that mother was still living in the family home. J.B. told the CASA representative he would visit with mother if the CASA representative were there in order to see what mother was like. However, he did not like to discuss the matter with father.

On April 21, 2008, the court continued the matter yet again. Because so much time had lapsed, the parties agreed that father would be provided with another month of reunification services and the matter would be set for an 18 month review hearing. Over DCFS's objections, the court ordered an after-court visit for father, mother and the maternal grandmother. DCFS and J.B.'s counselor later reported that as a result of visitation with mother, J.B. acted out for a week, and had deteriorated to the point that he was suspended from school at least two times per week. On May 14, 2008, the court allowed another after-court visit, pushed the matter to June 18, 2008, then again to July 10, 2008.

Eighteen Month Review Hearing

By the time of the July 10, 2008 hearing, J.B. had gone from kicking and hitting to exposing himself; nightmares, tantrums, and spreading his feces to threats of suicide. He was suspended from school as often as he attended. According to the CASA representative's report, those behaviors coincided with after-court visits with mother, or telephone calls from the maternal grandmother, whose visits had been suspended. The CASA representative believed father, mother and the maternal grandmother exhibited a hostility toward all others that was sabotaging J.B.'s treatment. J.B. regularly parroted their words, and had become cagey about what they said to him. However, earlier reports indicated father, mother and the maternal grandmother were continuing to tell J.B. that he would be going home with them, that the social worker was trying to prevent them from

visiting, and that uncle was trying to take J.B. away. Father even suggested he would take J.B. from Five Acres without anyone knowing. In light of that information, the CASA representative recommended termination of reunification services for father, with future, monitored visitation for father and mother in a therapeutic setting.

Father's therapist reported that father and mother regularly attended sessions, and father had two individual sessions. Father also enrolled in a parent group at Five Acres at the suggestion of J.B.'s therapist. On June 3, 2008, J.B. accused Five Acres staff of abusing him, and the matter was referred to counsel for investigation.¹⁰ During testimony at the hearing, J.B.'s therapist at Five Acres stated that when she had observed father and J.B. visiting, J.B. seemed to be enjoying himself and the visits went well.

In testimony to the court, J.B.'s therapist classified J.B. as a high-risk child, as J.B. was exhibiting physical aggression, severe tantrums and, decreasingly, episodes of rage, for which he required continued therapy. At the beginning of his stay at Five Acres, J.B.'s rages would be preceded by some commentary about family issues, but they later became more habitual behavior. While J.B. was not ready to be discharged from Five Acres, the therapist believed J.B. was improving. Before his discharge, the therapist recommended settling on a placement for J.B. so he could be transitioned into that setting and could begin family therapy with his anticipated caretaker. Moreover, his placement would require a structure like that of Five Acres, and parenting skills for high-needs children. While father was taking parenting classes at Five Acres, the therapist opined that he needed further training before he could handle J.B.'s needs. The therapist did not believe it would be good for J.B. to live with mother. In the therapist's opinion, not having a permanent plan for J.B. in place was detrimental to him because he remained angry at being torn between father and uncle.

Father also testified. He acknowledged that at the beginning of the case he should not have allowed mother to move back into the family home while J.B. was there, though he again denied that J.B. had been hurt by allowing her back home. In fact, he believed

¹⁰ The record does not indicate the outcome of the investigation.

the reason J.B. was acting out was because mother was required to leave the home, asserting that J.B. would be better if reunited with mother. Father confirmed having completed parenting classes, just as he had in the last dependency proceeding, and participating in counseling as required by his case plan. Additionally, he had begun attending an anger management program with J.B. at Five Acres. Father stated that mother had moved to the maternal grandmother's house. Father visited her on weekends, and spoke to her by telephone. If he were permitted to have J.B. returned to his custody, father promised to keep mother out of the house. Father claimed to have learned how to deal with J.B.'s outbursts, though father denied he had seen J.B. angry in a while. Mother also testified that on March 8, 2008, she moved out of the family home.

After taking that evidence, the juvenile court issued a decision that, despite reasonable reunification efforts, father had not made substantial progress toward alleviating the causes of J.B.'s removal to permit return of J.B. to father. It noted that J.B. had been the subject of earlier dependency proceedings. Even after the instant case was initiated, J.B. was returned to father's custody. Yet, father allowed mother access to J.B. again, despite his specific promise not to. Thereafter, father participated in reunification services, but never acknowledged that mother was a problem in J.B.'s life. Even at the 18 month review hearing, father contradicted all of the professionals' reports on J.B. to insist that J.B. would be better off with mother. Given that evidence, the juvenile court could not find that father would adequately protect J.B. if custody were returned to father. Indeed, the court found that because father could not grasp that mother posed a threat to J.B., even were further services provided to father, they would not alleviate the risk to J.B. Accordingly, the court terminated reunification services and set a hearing under section 366.26 to consider a permanent plan for J.B. This petition followed.

DISCUSSION

Extension of Reunification Services

In his petition, father begins with an argument that the juvenile court erred in failing to exercise its discretion, sua sponte, to extend reunification services past the 18 month date. Specifically, father believes J.B.'s special needs, which require J.B. to continue in residence at a treatment facility, constitute exceptional circumstances warranting continued services. Father's argument fails.

To begin, father did not request services beyond the 18 month date from the juvenile court. Instead, he now points to the decision in *In re Elizabeth R.* (1995) 35 Cal.App.4th 1774 as suggesting the juvenile court had a sua sponte duty to consider extending services. To the contrary, the very issue raised in *In re Elizabeth R.* was whether the juvenile court could extend services past the 18 month date, and the juvenile court and counsel discussed the issue extensively at the 18 month review hearing. (*In re Elizabeth R.* at pp. 1782-1783.) There was no suggestion in that case that a juvenile court has an independent duty to raise the issue.

Even if he had asked for additional services, father failed to demonstrate the existence of exceptional circumstances warranting an extension of services past the statutory maximum. The general rule is that if, after a maximum of 18 months of reunification services, a child cannot safely be returned to the custody of his parent, reunification must be terminated and a permanent plan selected for the child. (§ 366.22, subd. (a); see also, § 361.5, subd. (a)(3); *Los Angeles Department of Children and Family Services v. Superior Court* (1997) 60 Cal.App.4th 1088, 1092-1093.) Some cases have recognized that in rare circumstances, a continuance of the 18 month deadline should be allowed because some external factor has prevented a parent from participating in reunification. (*Denny H. v. Superior Court* (2005) 131 Cal.App.4th 1501, 1510; *In re Elizabeth R.*, *supra*, at p. 1799.) But nothing in the record here indicates that father was prevented from participating in his case plan or otherwise developing an understanding of why he needed to protect J.B. from mother's abuse. Certainly, J.B.'s placement in a

treatment facility did not prevent father from progressing in his own counseling efforts. If anything, it should have indicated to father the severity of J.B.'s behavioral issues and prompted a greater examination of its causes and escalation.

In any event, the record shows that the juvenile court did, in effect, consider whether an additional period of reunification would make it likely that J.B. could safely return to father's custody. The court held that father's continued failure to understand that mother's abuse of J.B. was a cause of J.B.'s problems, despite 22 months of reunification services, indicated additional services would not be productive. We review that conclusion for substantial evidence. (*Constance K. v. Superior Court* (1998) 61 Cal.App.4th 689, 705.) The record here reflects that throughout the extended reunification period, father maintained that mother did not harm J.B., that J.B. would be better at home with mother, and that J.B. and mother just needed to get their difficulties "out of their systems." Father's position persisted despite the fact that this was the second dependency proceeding necessitated by mother's abuse of J.B., that mother had twice been convicted of child cruelty toward J.B., and that J.B.'s doctors reported the continued threat of exposure to mother was exacerbating J.B.'s condition. Such evidence provides a substantial basis for the juvenile court's conclusion that the extension of additional services would do nothing to advance father's ability to understand J.B.'s situation and so to protect him. Accordingly, the juvenile court's conclusion will be upheld.

Failure To Substantially Progress in Case Plan

In a related argument, father challenges the juvenile court's finding that he did not substantially progress in his case plan. We review such decisions under the substantial evidence rule. (*Angela S. v. Superior Court* (1995) 36 Cal.App.4th 758, 763.) In assessing whether the juvenile court's order is supported, we must keep in mind the standard set by section 366.22, subdivision (a) for returning a child to the parent's home at the end of reunification: "The court shall order the return of the child to the physical custody of his or her parent . . . unless the court finds . . . that the return of the child . . .

would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child.” (§ 366.22, subd. (a).) Failure of the parent to make substantive progress in court-ordered treatment programs is prima facie evidence that return would be detrimental. (*Ibid.*) As the court in *In re Dustin R.* (1997) 54 Cal.App.4th 1131, 1143 held, simple compliance with a case plan is not determinative of whether a child may be safely returned to a parent’s custody. Rather, the objectives of the case plan – amelioration of the reasons for removal – must also be met. (*Ibid.*)

In this case, the record shows that although he attended parenting classes, participated in counseling, and even joined additional group programs offered at Five Acres, father had yet to acknowledge that mother was a destabilizing force in J.B.’s life. Instead, father continued to insist that J.B. was the problem, and that J.B. simply needed to be rejoined with mother. Even at the 18 month review hearing, father testified that he believed J.B.’s behaviors were caused by J.B.’s removal from mother. His assertion was in contradiction to the reports of numerous therapists who observed J.B.’s behavior deteriorate when exposed to even the idea of association with mother. Father’s assertion also disregarded the fact that this was the second time J.B. had been the subject of a dependency proceeding as a result of mother’s abuse, and that mother had actually been convicted of child abuse. Moreover, third parties, such as the social worker, uncle and the paternal grandmother, had observed outbursts by J.B. since the very outset of the case, not just since J.B.’s removal from mother. In fact, mother found reports of J.B.’s behavior to be proof of her prior statements that J.B. was an abusive, manipulative child. And, in December of 2006, father himself described J.B. as having acted out aggressively, suggesting J.B.’s behaviors were occurring long before he was removed from mother.

Father usually had mother join him in counseling sessions intended to address case issues, so did not truly consider the situation free from mother’s influence. In violation of the juvenile court’s orders, father continued to discuss the matter with J.B., pressing mother’s case in a manner that J.B.’s therapist concluded was undermining J.B.’s recovery. Father’s failure to embrace the idea that he had to protect J.B. from mother

resulted in his reneging on promises to keep mother from J.B., and necessitated repeated interventions by the juvenile court.

By continuing to deny mother's role in the family's pattern, father demonstrated that he had not progressed to the point that he could eliminate the cause of J.B.'s being declared a dependent of the court in the first place. There is substantial evidence to support the juvenile court's resulting conclusion that father did not make substantial progress in his case plan to permit J.B.'s safe return to his custody. Accordingly, the juvenile court acted correctly in terminating reunification services after 22 months and initiating selection of a permanent plan for J.B. (§ 366.22, subd. (a).)

Inadequate Reunification Services

Finally, father argues that DCFS did not provide adequate reunification services to him after J.B. was admitted to Five Acres. To the contrary, the record shows that throughout this case, DCFS was consistently involved with monitoring J.B.'s progress, conferring with J.B.'s therapists, corresponding with mother and father, and assisting J.B.'s caretakers, including while J.B. was placed at Five Acres. Thus, there is ample evidence supporting the juvenile court's finding of reasonable services in this case. (*In re Misako R.* (1991) 2 Cal.App.4th 538, 545.)

DISPOSITION

The petition for extraordinary relief is denied. This opinion shall become final immediately upon filing. (Cal. Rules of Court, rule 8.264(b)(3).)

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

ARMSTRONG, J.

We concur:

TURNER, P. J.

KRIEGLER, J.